

NO. 22728 ✓

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CHARLES DELGADO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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APPELLEE'S BRIEF

---

APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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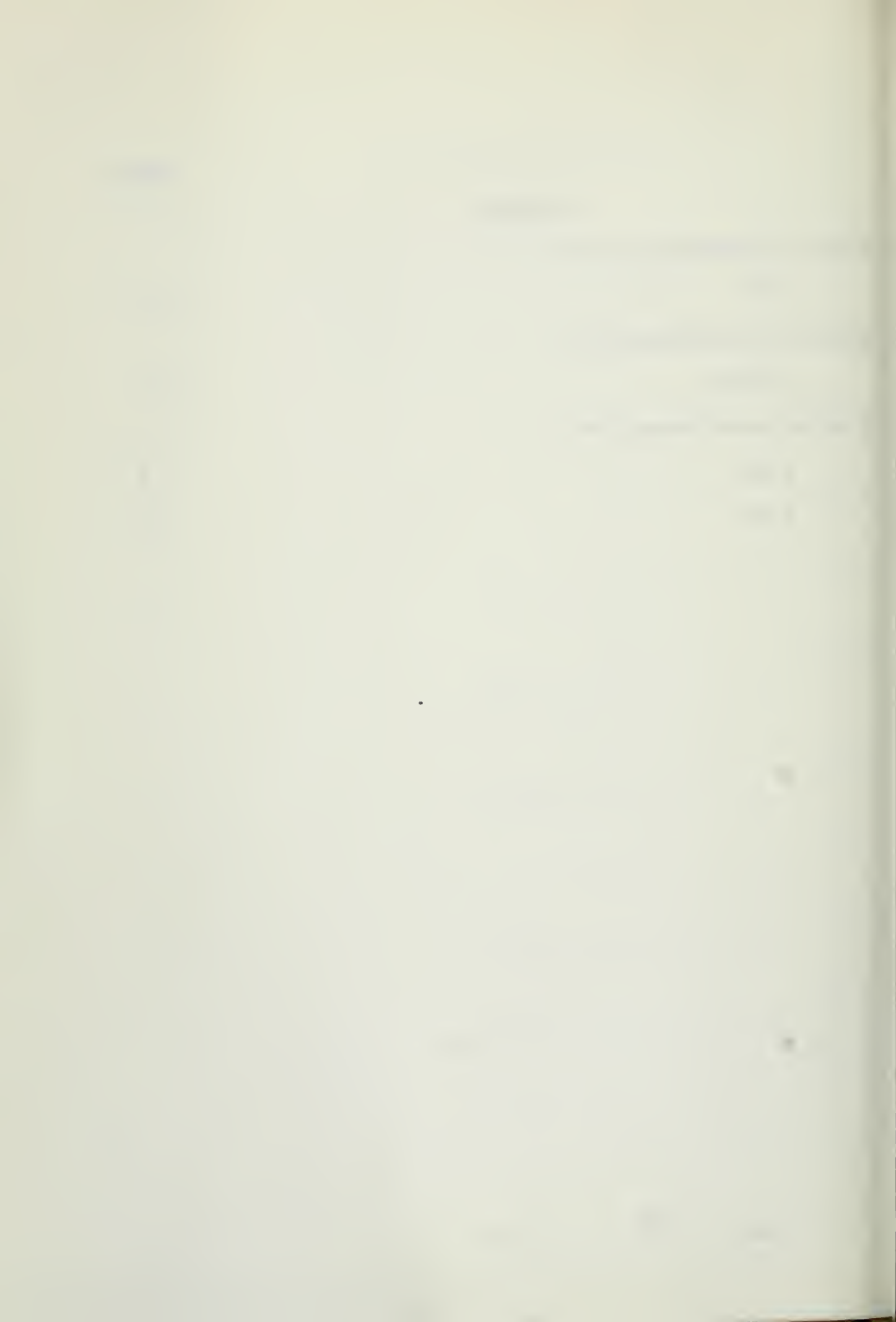
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APPELLEE'S BRIEF

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I

JURISDICTIONAL STATEMENT

Appellant, CHARLES DELGADO (hereinafter referred to as Delgado), was indicted by the Federal Grand Jury for the Central District of California on April 5, 1967 [C. T. 3]. <sup>1/</sup> The Indictment contained Twelve Counts alleging that on four separate occasions Delgado did possess, conceal and transport as well as sell, certain specified quantities of heroin. The Indictment contained charges that Delgado had violated Title 21, United States Code, Section 174, and Title 26, United States Code, Section 4705(a). Counts one, two and three concerned the sale of approximately

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<sup>1/</sup> Refers to Clerk's Transcript.



7.150 grams of heroin on or about February 10, 1967; Counts four, five and six concerned the sale of approximately 7.460 grams of heroin on or about February 13, 1967; Counts seven, eight and nine concerned the sale of approximately 31.760 grams of heroin on or about March 20, 1967, and Counts ten, eleven and twelve concerned the sale of approximately 36.740 grams of heroin on or about March 22, 1967 [C.T. 3-14].

On April 24, 1967, Delgado appeared before the Honorable E. Avery Crary, United States District Judge, Central District of California, for arraignment and entered a plea of not guilty to all counts of the indictment [C.T. 15]. At this time Delgado was represented by retained counsel, Mr. Harvey Byron [C.T. 15]. Upon entry of the plea of not guilty the case was assigned to the Honorable Manuel L. Real, United States District Judge, for all further proceedings [C.T. 15].

On June 20, 1967, trial by jury commenced and this trial ended on June 22, 1967, when the jury returned a verdict of guilty on nine counts and not guilty on three counts [C.T. 42-44].

On June 27, 1968, Delgado filed a motion for a new trial and it was scheduled for hearing on August 7, 1967 [C.T. 49]. On the court's motion the date for the hearing on the motion for a new trial and sentencing was continued to September 11, 1967 [C.T. 52]. On September 11, 1967, the court ordered that the hearing for the motion for a new trial be vacated because Delgado has assumed a fugitive status. [C.T. 53.]

On December 5, 1967, a substitution of attorneys was filed





substituting in the Messrs. Olestead and Freedman for Mr. Byron, as attorneys for Delgado. On December 11, 1967, Delgado's motion for a new trial was denied [C.T. 58]. At this time Delgado was sentenced to a term of five years' incarceration on Counts one, two, three, four and five and five years on each Count six, ten, eleven and twelve, said sentences concurrent with each other but consecutive to the sentence in Counts one, two, three, four and five for a total of ten years in the custody of the Attorney General [C.T. 57]. On December 19, 1967, Delgado filed a notice of appeal [C.T. 59].

The jurisdiction of the District Court was based upon Title 21, United States Code, Section 174, and Title 26, United States Code, Section 4705(a). This Court has jurisdiction to review the judgment of the District Court, pursuant to Title 28, United States Code, Section 1291 and 1294.

## II

### STATEMENT OF FACTS

The Indictment was returned in twelve counts charging Delgado with the unlawful sale of heroin. This indictment involves four transactions, each transaction resulting in three specific charges against Delgado. The first six counts of the indictment concerned two sales of heroin to Bruce Spyrison (hereinafter referred to as "Spyrison"), and these sales occurred on February 10 and February 13, 1967. Counts seven through twelve involved two



sales of heroin by Delgado to Billy Harvey (hereinafter referred to as "Harvey"), on or about March 20 and March 22, 1967.

On June 20, 1967, the case was called and the jury selected. During the selection of the jury, Venireman Chancellor was selected and counsel for Delgado passed for cause, but did thank Mr. Chancellor [R. T. 35]. However, at this time, counsel for the Government approached the bench and objected to Delgado exercising any additional peremptory challenges [R. T. 35]. The Government represented to the Court that Mr. Delgado had exercised his six peremptory challenges and a discussion ensued as to whether there had been five or six challenges, and it was concluded that six challenges had been used. All counsel and the trial judge assumed that a defendant was entitled to only six challenges and therefore Delgado was denied the right to exercise his seventh challenge [R. T. 35-36].

On the second day of trial, out of the presence of the jury, the Court informed Delgado that he had been improperly denied some peremptory challenges, in that he was allowed only six and the law stated that he had a right to ten peremptory challenges [R. T. 157]. The Court asked Delgado and his attorney to make a decision either to waive the error or a mistrial would be declared and a new jury selected for a new trial. As the Court stated:

"You understand that you have ten peremptory challenges and that only six were exercised. We precluded you from exercising any further challenges."



The defendant: "I understand this."

The court: "You waive that error?"

The defendant: "Yes, sir." [R. T. 157-58].

This waiver by the defendant to being deprived of four peremptory challenges was agreed to by Delgado's counsel, Mr. Byron [R. T. 157-58].

The proof concerning the alleged transaction occurring on February 10, 1967, consisted of Spyrisson testifying that he was contacted by Delgado, a meeting was arranged for the purpose of purchasing heroin at spot number 4, which was the parking lot of a market [R. T. 86]. Spyrisson testified that he gave the money to Delgado and then followed him into an alley where Delgado pointed to the base of a telephone pole, and at this place, Spyrisson picked up the heroin [R. T. 88-90]. Agent Walker of the Federal Bureau of Narcotics testified that he had the receiver for the transmitter that had been attached to Spyrisson's person and overheard the conversation between Delgado and Spyrisson, wherein they discussed the sale of heroin [R. T. 164-165]. As soon as Delgado left, Spyrisson turned over approximately 7 grams of heroin to the Federal Bureau of Narcotics [R. T. 167].

Spyrisson also testified concerning the purchase of heroin on February 13, 1967, from Delgado. In this case, Spyrisson again met with the Agents of the Federal Bureau of Narcotics, was searched, and travelled to spot number 4, the market parking lot [R. T. 91-92]. Spyrisson got into Delgado's car and was driven into an alley where he picked up the heroin [R. T. 93]. After





picking up the heroin Spyrison walked back to his car, and turned the heroin over to the agents [R. T. 93]. Agent Walker testified that he followed Spyrison while he travelled with Delgado and observed Spyrison return to his car with the heroin [R. T. 170].

Harvey testified that on March 20, 1967, he had acquired approximately 30 grams of heroin from Delgado [R. T. 129-130]. This transaction was not made under the supervision of the Federal Bureau of Narcotics and Delgado was acquitted. On March 22, 1967, Harvey contacted Delgado and arranged to purchase heroin [R. T. 130-131]. Harvey testified that he met with Agents of the Federal Bureau of Narcotics, was searched, and given \$275 in cash [R. T. 132-133]. Harvey then drove to a prearranged location where he observed Delgado [R. T. 133]. Delgado got into Harvey's car and took the \$275 [R. T. 134]. Agent Westrate had the receiver to a transmitter that was placed on Harvey's person [R. T. 209]. Agent Westrate heard Delgado tell Harvey that the "stuff" was stashed a few blocks away and that Harvey should follow [R. T. 212]. Harvey then followed Delgado to a street several blocks from the initial meeting area and parked behind Delgado [R. T. 134, 212]. Delgado got out from his car, went back and picked up a Kleenex, apparently from the ground, and threw it in the car and departed [R. T. 135, 213]. The contents of this Kleenex were proven to be heroin [R. T. 69, 219]. Shortly after Delgado left, he was arrested by Agents of the Federal Bureau of Narcotics. [R. T. 216-217.] From Delgado's possession the agents obtained the \$275 of prerecorded serial





numbered funds that had been provided Harvey for purchase of the heroin [R. T. 207, 216].

The trial concluded on June 22, 1967, and the jury returned a verdict finding Delgado guilty on nine counts and not guilty on counts seven, eight and nine of the Indictment [R. T. 352-353]. Sentencing was scheduled for August 7, 1967, however, this matter was continued on the Court's own motion to September 11, 1967 [C. T. 52]. On September 11, 1967, the defendant failed to appear and was determined to be a fugitive [C. T. 53]. On December 11, 1967, the defendant did appear in court and was sentenced to the custody of the Attorney General for a period of ten years [C. T. 57].



### III

#### SPECIFICATION OF ERRORS

- A. CAN THE DEFENDANT ALLEGE AS ERROR ON APPEAL THE FACT THAT HE WAS ERRONEOUSLY PRECLUDED FROM UTILIZING FOUR OF HIS PEREMPTORY CHALLENGES WHEN THIS ERROR WAS EXPRESSLY WAIVED BY DEFENDANT AND HIS COUNSEL DURING THE TRIAL?
- B. DID THE TRIAL COURT COMMIT ERROR BY PERMITTING A WITNESS-AGENT TO REMAIN IN THE COURTROOM DURING THE TRIAL WHEN NO OBJECTION WAS RAISED AT THE TRIAL?
- C. DOES THERE EXIST AN ABUSE OF DISCRETION IN HEARING AND DENYING A MOTION FOR A NEW TRIAL, WHEN COUNSEL FOR THE DEFENDANT BECAME ATTORNEY OF RECORD SIX DAYS PRIOR TO THE HEARING?
- D. DOES THE RECORD REFLECT SUFFICIENT EVIDENCE TO JUSTIFY THE CONVICTION?
- E. IS IT PREJUDICIAL ERROR TO FAIL TO GIVE AN INSTRUCTION WARNING THE JURY TO VIEW WITH CAUTION THE TESTIMONY OF INFORMERS, WHEN NO INSTRUCTION WAS REQUESTED AT TRIAL BY COUNSEL FOR THE DEFENDANT?



## ARGUMENT

A.      A WAIVER OF AN ERRONEOUS  
         DENIAL OF DEFENDANT'S RIGHT  
         TO EXERCISE A PEREMPTORY  
         CHALLENGE PRECLUDES THAT  
         QUESTION FROM BEING RAISED  
         ON APPEAL.

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Defendant Delgado alleges that the conviction should be reversed because he was allowed only six of his ten authorized peremptory juror challenges [Appellant's Brief, p. 12]. It is further argued that the error committed on the first day of trial cannot be cured or waived by the proceedings that occurred on the second day of trial [Appellant's Brief, p. 16]. It is not disputed that Delgado was improperly limited to six peremptory challenges. When Venireman Chancellor was interrogated the defendant made the statement "The defendant will thank you" [R.T. 35], and at that time the Government sought a hearing at the bench. At this discussion at the bench, out of the hearing of the jury, the Government contended that the defendant had utilized his six peremptory challenges and a discussion followed whether it had been five or six. The court held that the defendant had exercised six challenges, and the defendant was precluded from exercising any additional peremptory challenges. [R.T. 35-36].

On the second day of the trial prior to bringing the jury in, the court stated:

"Mr. Byron, I made a mistake yesterday. You have ten peremptory challenges and not six. We have



two alternatives. We have the alternative that you and the defendant, you might consult with him, accept the jury based upon the fact that you were not given ten peremptory challenges or declaring a mistrial and getting a new panel" [R. T. 157].

At that time, Mr. Byron, counsel for defendant, said:

"Your Honor, we will accept the jury as now impaneled" [R. T. 157].

The court then addressed the defendant Delgado and stated:

"You understand that you have ten peremptory challenges but only six were exercised. We precluded you from exercising any further challenges."

The defendant: "I understand this."

The court: "You waive that error?"

The defendant: "Yes, sir." [R. T. 158.]

It is respectfully submitted that in light of the court's statement to Delgado and his counsel, and their clear and unequivocal replies, that a knowing and conscious waiver of the error was made by Delgado. While no case directly on point has been found, it is respectfully submitted that the reasoning set forth in Patton v. United States, 281 U.S. 276, (1930), clearly establishes that a knowing and intelligent waiver of this error, with the defendant's consent, is binding upon that defendant and effectively precludes him from raising this alleged error





on appeal. See also, Horne v. United States, 264 F. 2d 40 (5 Cir. 1959), cert. denied 360 U.S. 934, where the court held that even though a written waiver is required to complete a trial with a jury of less than twelve people, this is not a mandatory requirement that it be in writing, but was designed merely to be certain that the right was knowingly and intelligently waived. It is respectfully submitted that the waiver of the defendant Delgado fits squarely within the principles set forth in the cases of Patton v. United States, supra, and Horne v. United States, supra.

Appellant attempts to circumvent his waiver by alleging that the waiver was insufficient because he was not presented with all conceivable alternatives to correct the error. Appellant contends that the court, on its own motion, could not effectively declare a mistrial for this error because jeopardy would attach and a second trial could not be possible. In support of this proposition appellant cites the case of Howard v. United States, 372 F.2d 294 (9 Cir. 1967). In the Howard case the court held that while the general rule is jeopardy attaches when a jury is impaneled there exists certain exceptions. One of the clear exceptions is that a mistrial can be declared when unforeseeable circumstances forces a determination of the trial without a verdict. Id. at 298. In this case the error of the Assistant United States Attorney, the court and of counsel for Delgado concerning the proper number of peremptory challenges was certainly unforeseeable. No case authority has been found that



would indicate the court could not declare a mistrial, and allow the case to be retried. To hold to the contrary would place an untenable premium on form and would not be in the interest of justice. The alternative would be that upon conviction, the defendant appeals and upon a reversal a new trial would be instituted. This would be a costly, and awkward approach to correcting an error that was noticed at the outset of a trial.

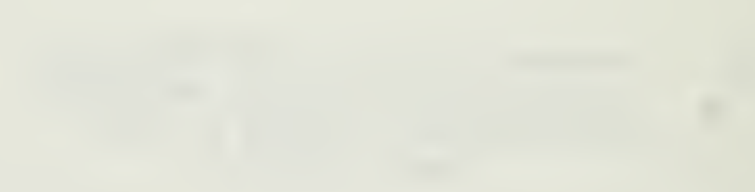
However, even if appellant's contention is deemed to have merit, it is not a question for review in this case because Delgado and his counsel chose to proceed with the jury as constituted and, therefore, waived any speculative as well as real error that may have existed.

B.        THERE DID NOT EXIST ANY  
             VIOLATION OF THE WITNESS  
             EXCLUSION ORDER IN THE  
             TRIAL COURT.

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Appellant contends that there was a violation of the witness exclusion order because Agent Westrate of the Federal Bureau of Narcotics sat at counsel table and did testify for the Government [Appellant's Brief, pp. 16-19]. Counsel for Delgado moved that there be an exclusion of the Government's witnesses from the courtroom and the court ordered that the witnesses be excluded [R.T. 50]. Counsel for the Government requested that Agent Westrate be allowed to remain in the courtroom at counsel table and the court was informed that Agent Westrate would testify.

The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to discuss the various factors that have shaped the development of the United States, including the role of the government, the influence of the economy, and the impact of the culture. The paper concludes by emphasizing the need for a continued study of the history of the United States in order to ensure a bright future for the nation.



The second part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to discuss the various factors that have shaped the development of the United States, including the role of the government, the influence of the economy, and the impact of the culture. The paper concludes by emphasizing the need for a continued study of the history of the United States in order to ensure a bright future for the nation.

[R.T. 50.] The court ordered that "Mr. Westrate may remain at counsel table [R.T. 50]. No objection was raised to this order by counsel for Delgado and the remaining witnesses were excluded. The entire record is void of any indication that any other Government witness was improperly in the courtroom or did transmit any information. As the courts so often state:

"We do not presume errors; we require the appellant to demonstrate it."

Sica v. United States, 325 F.2d 831  
(9 Cir. 1963), at 836, cert.  
denied 376 U.S. 952.

It is also well established that the control of witnesses and their exclusion or presence during a trial is left to the sound discretion of the trial court. See United States v. Bostic, 327 F.2d 983 (6 Cir. 1964). In fact, even if a violation of an exclusion order is established, it is up to the sound discretion of the trial court to determine what measures are necessary to rectify the situation.

See Spindler v. United States,  
336 F.2d 678 (9 Cir. 1964).

It has always been incumbent upon an appellant to show what prejudice he has suffered in considering the propriety of a refusal to exclude witnesses.

See Kaufman v. United States,  
163 F.2d 404 (6 Cir. 1947),  
cert. denied 333 U.S. 857;





Mitchell v. United States, 126 F.2d 550

(10 Cir. 1942),

cert. denied 316 U.S. 702, reh.

denied 324 U.S. 887.

The failure of the defendant Delgado to indicate in any way how the order was violated, what prejudice, if any, was suffered by the defendant Delgado, and the lack of any objection to Agent Westrate's presence in the courtroom clearly renders appellant's alleged error to be frivolous and totally without merit.

C. THE TRIAL COURT DID NOT  
ABUSE ITS DISCRETION IN  
DENYING DEFENDANT DEL-  
GADO'S MOTION FOR A NEW  
TRIAL.

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On June 27, 1967, defendant Delgado through his attorney, Harvey Byron, filed a motion for a new trial and noticed said motion to be heard on August 7, 1967 [C.T. 49-50]. The hearing was rescheduled on the court's own motion for September 11, 1967 [C.T. 52]. On September 11, 1967, the court entered its order vacating defendant Delgado's motion for a new trial because Delgado was a fugitive and not present for the hearing [C.T. 53]. The Clerk's Transcript establishes that no waiver of the defendant Delgado's presence at the hearing had been filed. On November 27, 1967, the defendant Delgado was again in custody and appeared with his counsel, Mr. Byron. Counsel for Delgado moved for a sub-





stitution of attorneys for the purpose of the probation and sentencing and for the hearing on the motion for the new trial. The court ordered said motion denied [C.T. 54]. On December 5, 1967, a substitution of attorneys was filed, substituting in Norman T. Ollstead and Alan Freedman for Harvey Byron. This substitution of attorneys was dated December 1, 1967, some ten days prior to the scheduled hearing on the motion for a new trial. [C.T. 55.] On December 11, 1967, the defendant's motion for a new trial was denied [C.T. 58].

The accepted standard for reviewing a ruling denying a motion for a new trial is to determine whether or not there has been a clear abuse of discretion on the part of the trial court in denying the motion.

See Lindsey v. United States, 368 F.2d 633

(9 Cir. 1966), at 636;

Straight v. United States, 263 F.2d 811

(9 Cir. 1959) at 813.

The motion filed in this case by Mr. Byron basically alleged that the request for a new trial was on all statutory grounds with emphasis on the alleged insufficiency of the evidence to warrant the conviction[C.T. 50].

In reviewing the evidence of the case, infra, it will clearly be shown that there exist substantial evidence upon which to justify the conviction of defendant Delgado. The Honorable Manuel L. Real, United States District Judge, did have the opportunity to preside over the entire trial of this case and was



also aware of Delgado's fugitive status after the jury returned its verdict. If, as the appellants contend, the basic purpose of a motion for a new trial is that Judge Real was to sit as a "thirteenth juror" then there can hardly be any doubt that based upon the evidence and his ruling the thirteenth juror was not inclined to alter the prior verdict.

Counsel for Delgado alleged that they were denied their right to submit arguments because they did not try the case and the transcripts of the trial were not available. A continuance of a scheduled court proceeding is left to the sound discretion of the trial court. If counsel have not prepared their case, after having ten days to do so, it can hardly be alleged the denial of a continuance was an abuse of discretion.

In order to warrant a reversal it is incumbent upon appellants to show what prejudice Delgado suffered by the Court's refusal to grant a continuance of the hearing on the motion for a new trial. See Sica v. United States, supra. Counsel for appellant has failed to show any argument or reason that they could have presented to Judge Real on the motion for a new trial that would even remotely indicate that a new trial would be granted. Judge Real was very familiar with the facts of this case, and it was imminently fair and proper for the motion to be ruled upon on December 11, 1967. It is respectfully submitted that the record is void of any facts indicating an abuse of discretion for denying the motion for a new trial, or for a continuance of the hearing on the motion.



D. THE EVIDENCE IN THIS CASE  
CLEARLY ESTABLISHES THAT  
CHARLES DELGADO DID VIOLATE  
THE CRIMES FOR WHICH HE WAS  
CONVICTED BEYOND A REASON-  
ABLE DOUBT, AND THERE EXISTS  
SUBSTANTIAL EVIDENCE TO JUSTIFY  
THIS CONVICTION.

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Appellant's argument that there does not exist sufficient evidence to justify the conviction of Delgado is apparently premised upon the erroneous assumption that the evidence indicates that the heroin belonged to Spyrison and Harvey, and not the appellant [Appellant's Brief, p. 23]. The apparent theory utilized by appellant is that Spyrison and Harvey framed Delgado, because they sought favors from the Government and owed Delgado money. Harvey did acknowledge that he owed Delgado \$500, but it was for a previous purchase of heroin [R.T. 139].

The evidence in the instant case upon which Delgado was convicted, establishes that on February 10 and February 13, Spyrison was searched and followed to spot No. 4, a code designation for a parking lot, where he met the defendant, Delgado [R.T. 87-88, 92-93]. This fact was observed by agents of the Federal Bureau of Narcotics [R.T. 159, 170]171, and 198-201]. Agent Walker also overheard conversation concerning the sale of heroin by Delgado, because a Kel transmitter had been placed on the person of Spyrison [R.T. 163-165]. On both occasions Delgado did lead Spyrison to the place where the narcotics were located and pointed out the heroin to Spyrison, the purchaser [R.T.





89, 93]. In fact Agent Westrate saw Delgado extending his arm and pointing in an alley where heroin was subsequently found by Spyrison [R. T. 201]. On March 22, 1967, Agents of the Federal Bureau of Narcotics observed Harvey meet with defendant Delgado [R. T. 210]. Prior to this meeting the agents searched and gave Harvey \$275 to purchase heroin from Delgado [R. T. 203]. The agents observed Harvey follow the defendant Delgado and park behind Delgado's automobile [R. T. 213]. Delgado went to Harvey's car and, according to Harvey, threw the heroin on the seat of Harvey's car [R. T. 133]. Agent Westrate overheard the conversation between Harvey and Delgado. During this conversation, Delgado stated the "stuff" was a few blocks away, and instructed Harvey to follow [R. T. 212]. After determining that heroin had been transferred, the agents apprehended Delgado. Subject to a search incident to this arrest, Delgado was found in possession of the \$275 of pre-recorded serial numbered money used to pay for the heroin [R. T. 204, 217].

Appellant has failed to cite any case which would even remotely indicate that the evidence presented against Delgado was insufficient to justify this conviction. It is respectfully submitted that the question of credibility between defendant Delgado, Spyrison and Harvey, considered with the corroboration provided by the agents, is clearly enough evidence to justify Delgado's conviction. In this case there exists overwhelming evidence in support of Delgado's conviction.





E. WHEN AN INFORMER'S TESTIMONY  
IS CORROBORATED, AND NO INSTRUC-  
TION CONCERNING THE WEIGHT TO  
BE GIVEN AN INFORMANT'S TESTI-  
MONY IT IS NOT ERROR FOR THE  
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Appellant contends that it was error and a denial of due process for the court to fail to give a cautionary instruction concerning the testimony of Spyrison and Harvey because they were known narcotics addicts and possibly had something to gain from the conviction of defendant Delgado [Appellant's Brief, p. 27]. But appellant fails to indicate just what type of a cautionary instruction he would give, because neither in appellant's brief nor at the trial was any request made for a cautionary instruction. However, at the commencement of trial the court did carefully instruct the jury that they were to be the sole judges of the credibility of every witness, this included the fact that their credibility is to be tested on whether they have been convicted of a felony or not, and any bias or special interest that they may have in the case. [R. T. 43-44.] In the present case, Spyrison and Harvey did admit their previous violations of the law [R. T. 120-121, and 139-141], and they did testify that they were seeking a benefit from the Government by helping to bring the defendant Delgado to justice [R. T. 123-124 and 150].

It is up to the sound discretion of the trial court to determine whether a cautionary instruction is required concerning



the testimony of informers. See United States v. Hoffa, 349 F.2d 20 (6 Cir. 1965), at 52, cert. denied 382 U.S. 1024. In considering the necessity of a cautionary instruction on the credibility of Spyrisson and Harvey, it is respectfully submitted that the corroboration itself precluded any necessity of depending solely upon their testimony to obtain the conviction of defendant Delgado. Each of the transactions occurred under surveillance agents and on two occasions radio transmitters were utilized whereby conversations were overheard. If sufficient corroboration exists, then a cautionary instruction is not required. See Lujan v. United States, 348 F.2d 156 (10 Cir. 1965), cert. denied 382 U.S. 889. Even in cases where a specific instruction has been requested at trial, the courts have held that a general bias instruction will be sufficient when the informer's testimony is corroborated. See Orebo v. United States, 293 F.2d 747 (9 Cir. 1961), cert. denied 368 U.S. 958.

It is difficult to understand why appellant has raised this issue when the court specifically asked counsel for Delgado whether he anticipated submitting any instructions to the jury. Counsel for Delgado informed the court that he did not anticipate submitting any additional instructions [R.T. 239]. Counsel for Delgado reviewed all proposed instructions and did not object to the instructions, nor were any additional instructions requested. [R.T. 239-45]. Based upon the instructions given, counsel for



elgado's approval thereof, and the totality of the evidence,  
is respectfully submitted that appellant's contention is totally  
without merit.

For the reasons set forth in the above argument, it is  
respectfully submitted that the conviction should be affirmed.

Respectfully submitted,

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